

**SURVEY OF RECENT DECISIONS**  
**OF**  
**THE HONORABLE PAUL J. KILBURG**

**U.S. Bankruptcy Court  
Northern District of Iowa**

**October 31, 2000 - October 17, 2001**

**Prepared by**

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The case summaries are categorized to correlate with the Key Number Classification of West's Bankruptcy Digest. West's key numbers are included in the topic headings below. Summaries of prior decisions (April 23, 1993 to October 31, 2000) are available on our web site, [www.ianb.uscourts.gov](http://www.ianb.uscourts.gov).

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## **I. IN GENERAL, 2001-2120**

## **II. COURTS; PROCEEDINGS IN GENERAL, 2121-2200**

### **B. Actions and Proceedings in General, 2151-2180**

Durns v. Dawson (In re Sarah E. Dawson)

Rule 7041

No. 00-01534-W, Adv. 00-9121-W, Ch. 7, 6/20/01

Debtor seeks to dismiss complaint for failure to comply with Rules for service of a summons and with order of the Court extending time for service. HELD: In the circumstances, Plaintiffs made a reasonable attempt to serve their complaint. They delivered the summons to the Sheriff's Department for service and the holiday season intervened.

## **III. THE CASE, 2201-2360**

### **C. Voluntary Cases, 2251-2280**

In re Keith and Sally Beckel

11 U.S.C. § 707(b)

No. 01-02076-D, Ch. 7, 10/17/01

U.S. Trustee seeks dismissal for substantial abuse under § 707(b). Debtors filed amended schedules and assert there is no extra income available to pay creditors. HELD: Debtors have a sizeable income. Discretionary expenses lumped together with excessive nondiscretionary expenses indicate Debtors have disposable income with which they could pay 30% to 80% of their unsecured debt over three years. Case is dismissed unless Debtors choose to convert to Chapter 13.

In re Alan Harger

11 U.S.C. § 707(b)

No. 01-02466-C, Ch. 7, 10/3/01

(published at \_\_\_ B.R. \_\_\_, 2001 WL 1173887)

U.S. Trustee moves to dismiss for substantial abuse under sec. 707(b). HELD: Debtor is capable of substantial payment to creditors. Future increases in expenses or decreases in income can be addressed when they actually occur. Dismissal for substantial abuse is warranted.

### **G. Conversion, 2331-2340**

In re Kandy Ryan

11 U.S.C. § 706(b)

No. 01-01623-C, Ch. 7, 9/26/01

§ 707(b)

(published at \_\_\_ B.R. \_\_\_, 2001 WL 1149073)

Creditor moves to convert from Chapter 7 to Chapter 11, asserting Debtor has overstated expenses and could pay creditors under a plan of reorganization. Debtor argues Chapter 11 is not appropriate in her financial situation. U.S. Trustee states no 707(b) motion was filed based on Debtor's pregnancy and marital status. HELD: Creditor has standing under sec. 706(b) but not under 707(b). A 706(b) motion requires Creditor to prove grounds for conversion including Debtor's ability to reorganize. Debtor is a salaried employee and has no business to reorganize. The Court declines to sua sponte review the case for substantial abuse under 707(b). Creditor is not barred from seeking conversion to Chapter 11 but may not, under that guise, seek substantial abuse dismissal under 707(b).

#### **IV. EFFECT OF BANKRUPTCY RELIEF; INJUNCTION & STAY, 2361-2490**

##### **B. Automatic Stay, 2391-2420**

Swanson v. Glaser (In re Charles E. Glaser)

11 U.S.C. § 362(d)

No. 00-01218-C, Adv. 00-9113-C, Ch. 7, 11/27/00

§ 550(a)

Plaintiff seeks to partition and sell Debtor's homestead to satisfy a Wisconsin Bankruptcy Court judgment finding that property division in an Iowa dissolution judgment constituted a fraudulent conveyance. HELD: The Wisconsin judgment awards Plaintiff, the Ch. 7 trustee of Debtor's former wife's bankruptcy case, \$40,000 in value, but not an interest in the homestead. Plaintiff, is a judgment creditor, not a co-owner of the property. The Wisconsin judgment is not a lien on Debtor's Iowa homestead. Plaintiff, an unsecured creditor, is not entitled to relief from stay.

##### **C. Relief from Stay, 2421-2460**

In re Brazelton Cedar Rapids Group, LC

11 U.S.C. § 362(d)(1)

No. 00-02300-C, Ch. 11, 1/5/01

Bank seeks relief from stay to foreclose or adequate protection of its security interest in Debtor's hotel real estate. HELD: Bank is entitled to adequate protection of its security interest to the extent of the value of the property. Debtor's proposal of three months of \$13,000 payments and \$23,000 thereafter is acceptable.

#### **V. THE ESTATE, 2491-2760**

##### **D. Liens & Transfers; Avoidability, 2571-2600**

Hanrahan v. Triad Financial Corp.

11 U.S.C. § 554

(In re Betty Merritt)

Iowa Code § 321.50

No. 00-02481-C, Adv. 00-9231-C, Ch. 7, 8/27/01

§ 321.48

(published at \_\_\_ B.R. \_\_\_, 2001 WL 1149072)

§ 321.25

Trustee seeks to avoid lien on Debtor's vehicle. Creditor noted its lien on the vehicle title more than 30 days after Debtor purchased it and entered into a security agreement. HELD: Creditor substantially delayed in applying for notation of the lien on the vehicle title, in violation of the various Iowa provisions which create a 45-day window for dealers to perfect a security interest. Creditor's security interest is unenforceable because it was not timely filed under the Iowa Code.

### **E. Preferences, 2601-2640**

Hanrahan v. Hills Bank & Trust Co.

11 U.S.C. § 547

(n re Jennifer and John Meade)

No. 00-00702-C, Adv. 00-9208-C, Ch. 7, 4/23/01

Trustee seeks to recover from Bank to the extent that it improved its position over other unsecured creditors. Bank argues it gave new value under an agreement seven days prior to the petition date which granted the Bank a lien on Debtors' vehicles. HELD: Trustee has proved the elements of a preferential transfer. New value was given to the extent the Bank's advances exceeded antecedent debt. The lien is avoided to the extent of the amount of the antecedent debt which was not new value.

### **VI. EXEMPTIONS, 2761-2820**

In re Henry and Pamela Banke

11 U.S.C. § 522(l)

No. 01-01281-W, Ch. 7, 10/4/01

Rule 4003(b)

(published at \_\_\_ B.R. \_\_\_, 2001 WL 1173891)

The Bank wishes to object to exemption of Debtors' boat, motor and trailer. Debtors assert the Bank's objection is barred as untimely. HELD: Courts strictly adhere to the deadline for objecting to exemptions. The Bank failed to object within thirty days after it had actual notice of Debtors' amended exemptions. Although it did not receive notice of Amended Schedule C, it received actual notice of the claim of exemption through other documents from Debtor. The Bank's earlier motion for relief from stay is insufficient to constitute an objection to exemption. Debtors' boat, motor and trailer are exempt.

In re Kimberly Hurd

11 U.S.C. § 522(b)(2)

No. 01-01560-D, Ch. 7, 10/3/01

Trustee objects to Debtor's homestead exemption claim. He asserts she has abandoned the residence and Iowa law does not apply to the home located in Wisconsin. HELD: The case is controlled by the more limited Wisconsin homestead exemption. Debtor vacated the premises and expressed only a vague intention to return to the property. The exemption is denied as Debtor voluntarily abandoned the homestead.

In re Robert W. Pepmeyer  
No. 00-02486-C, Ch. 7, 2/14/01

Iowa Code § 627.6(8)(f)

Trustee objects to exemption of Debtor's IRA. HELD: Debtor's IRA is an annuity which is not exempt according to a decision of the 8th Cir. B.A.P. This court will respect that court's conclusion.

Swanson v. Glaser (In re Charles E. Glaser)  
No. 00-01218-C, Adv. 00-9113-C, Ch. 7, 2/6/01

Iowa Code § 561.16  
§ 598.21

Plaintiff asserts default judgment is preacquisition or dissolution debt from which Debtor's homestead is not exempt. HELD: Default judgment entered in Wisconsin Bankruptcy Court did not predate Debtor's acquisition of his homestead and does not rise from a dissolution action. Objection to exemption is denied.

In re Daniel James Ellis  
No. 99-00191-D, Ch. 7, 12/4/00

11 U.S.C. § 507(a)(7)

Debtor's ex-wife has a claim which is secured by Debtors vehicle as well as entitled to priority as support. Debtor objects to Trustee's final report providing less than full payment to this creditor. HELD: Ms. Ellis has a secured claim to the extent of the value of her collateral. She is entitled to priority distribution to the extent she is undersecured.

## **VII. CLAIMS, 2821-3000**

### **B. Secured Claims, 2851-2870**

In re Michael and Pamela McAllister  
No. 01-00153-W, Ch. 7, 8/21/01  
(published at \_\_\_ B.R. \_\_\_, 2001 WL 1149068)

Iowa Code § 554.9203  
§ 554.9303

Debtors seek determination of priority of secured interests in farm equipment. A Bank and Ag Services both perfected by filing financing statements, with the Bank's filed first in time. Ag Services provided purchase money for the equipment. HELD: Iowa follows the dual status doctrine for purchase-money security interests. The Court needs more information regarding how Ag Services accounted for payments to determine the extent of its PMSI using the FIFO method.

### **C. Administrative Claims, 2871-2890**

In re Blessing Industries, Inc.  
No. 00-00140-W, Ch. 7, 4/5/01  
(published at 263 B.R. 268)

11 U.S.C. § 503(b)(1)  
§ 364(a)

Creditor requests an administrative priority claim for a postpetition infusion of capital he provided Debtor which kept the business going. HELD: The transaction was not in Debtor's ordinary course of business. Retroactive, nunc pro tunc approval of the cash infusion is not appropriate in this case. Creditor was not justified in acting without court approval.

#### **D. Proof; Filing, 2891-2920**

In re Dennis and Li-Chuang Sheskey  
No. 99-01697-D, Ch. 7, 4/3/01  
(published at 263 B.R. 264)

11 U.S.C. § 502(b)(2)  
U.C.C. § 3-104

Debtor's parents object to Trustee's Final Report. They assert a claim under a loan to Debtor from his sister, which they allege was orally assigned to them. HELD: The parents' claim based on the note is unenforceable because they never had possession of the note. The remainder of their claim is allowed, including prepetition interest.

#### **E. Determination, 2921-2950**

In re Brazelton Cedar Rapids Group, LC  
No. 00-02300-C, Ch. 11, 5/3/01  
(published at 264 B.R. 195)

Rooker-Feldman doctrine  
Claim preclusion

Debtor objects to proof of claim which is based on an Iowa District Court judgment in the creditor's action on a contract. HELD: The Court lacks subject matter jurisdiction to hear Debtor's objection under the Rooker-Feldman doctrine. Furthermore, res judicata precludes Debtor from asserting defenses in Bankruptcy Court when it had the opportunity and failed to defend in state court.

In re Brazelton Cedar Rapids Group, LC  
No. 00-02300-C, Ch. 11, 5/10/01  
(published at 264 B.R. 201)

11 U.S.C. § 502  
Rule 3001  
Iowa Code § 554.1208

Debtor objects to proof of claim. It asserts Creditor is not entitled to postpetition interest, fees, penalties and interest charged under the acceleration provision. HELD: The claim is presumptively valid. Debtor has not rebutted the Creditor's claim that penalties and attorney fees arose prepetition. Also, acceleration took place prepetition. The claim is allowed as filed.

### **VIII. TRUSTEES, 3001-3020**

### **IX. ADMINISTRATION, 3021-3250**

### **X. DISCHARGE, 3251-3440**



## **B. Dischargeable Debtors, 3271-3340**

Molstad v. Brunken (In re Randall J. Brunken)

11 U.S.C. § 727(a)(2)(B)

No. 00-00235-S, Adv. No. 00-9077-S, Ch. 7, 12/5/00

§ 727(a)(4)(A)

Debtor failed to disclose certain assets, including guns, in his schedules. He subsequently transferred the guns to his mother. Trustee requests denial of discharge. HELD: Denial of discharge is appropriate both for the postpetition transfer of the guns to Debtor's mother and for failing to disclose ownership of the assets on his schedules. Debtor sought to conceal assets from the Trustee and creditors through transfers and inaccurate representations.

## **C. Debts and Liabilities Discharged, 3341-3410**

El Khabbaz v. Sallie Mae Servicing

11 U.S.C. § 523(a)(8)

(In re Khalid and Michelle El Khabbaz)

No. 95-22466-D, Adv. 00-9197-D, Ch. 7, 6/26/01

(published at 264 B.R. 204)

After Debtors received a Chapter 13 discharge, student loan creditors attempted to collect. Creditors argue the debt survived discharge despite language in the plan to the contrary. HELD: Student loan debts in Debtors' case, filed in 1995, were subject to discharge as being more than seven years old. Debtors' loans originated more than seven years before the petition date but were consolidated 14 months prepetition. Debtors' confirmed plan states, erroneously but without objection by Creditors, that the loans were more than seven years old and were discharged. Creditors are bound by the terms of the plan.

Durns v. Dawson (In re Sarah E. Dawson)

Fed. R. Civ. P. 9(b)

No. 00-01534-W, Adv. 00-9121-W, Ch. 7, 6/20/01

(published at 264 B.R. 13)

Debtor seeks summary judgment in dischargeability action. She argues her discharge makes the action moot. Also, Debtor asserts the complaint does not plead fraud with sufficient particularity. HELD: Entry of discharge does not affect this timely action to determine whether the debt is excepted from discharge. The Iowa District Court judgment attached to the complaint sufficiently states facts and asserts nondischargeability by implying fraud or intentional tort to survive summary judgment.

Meling v. Department of Education (In re Diane Kristin Meling)

11 U.S.C. § 523(a)(8)

No. 99-03008-W, Adv. No. 00-9004-W, Ch. 7, 4/9/01

(published at 263 B.R. 275)

Debtor seeks undue hardship discharge of student loans. HELD: Debtor was diagnosed with bi-polar disorder and would not be able to work more than part-time for the rest of her life. She carried her burden

and established sufficient facts which showed payment of student loans would impose an undue hardship. Debtor's student loan is discharged.

Becker v. Alcorn (In re Bruce and Leah Alcorn)

11 U.S.C. § 523(a)(6)

No. 00-01881-C, Adv. 00-9179-C, Ch. 7, 2/22/01

Plaintiff landlord seeks to have her claim excepted from discharge alleging willful and malicious injury to her rental property. HELD: Although plaintiff showed that injury to property was willful, she failed to prove the injury was purposefully targeted at creditor. Thus, Plaintiff failed to prove the malicious element required by § 523(a)(6). Plaintiff's claim is discharged.

Scholl v. Nebraska Student Loan Program

11 U.S.C. § 523(a)(8)

(In re Don Bradley Scholl)

20 U.S.C. § 1087(c)

No. 98-03531-C, Adv. No. 99-9190-C, Ch. 7, 1/31/01

(published at 259 B.R. 345)

Plaintiff seeks undue hardship discharge of student loan. Plaintiff withdrew after less than a semester and alleges institution promised to repay loan to government. HELD: Administrative remedy under Higher Education Act should have been pursued prior to seeking relief in bankruptcy. Plaintiff's complaint is dismissed without prejudice.

Madsen v. Meyer (In re John and Shelli Meyer)

11 U.S.C. § 523(a)(2)(A)

No. 99-00980-W, Adv. 99-9067-W, Ch. 7, 12/27/00

§ 523(a)(6)

Creditors assert their claim for Debtor's failure to provide cabinets and woodwork as agreed is nondischargeable. HELD: Creditors have proved all five elements of § 523(a)(2)(A). They failed to prove the "maliciousness" element of § 523(a)(6). The debt is excepted from discharge.

## **XI. LIQUIDATION, DISTRIBUTION, AND CLOSING, 3441-3460**

## **XII. BROKER LIQUIDATION, 3461-3480**

## **XIII. ADJUSTMENT OF DEBTS OF A MUNICIPALITY, 3481-3500**

## **XIV. REORGANIZATION, 3501-3660**

## **XV. ARRANGEMENTS, 3661.100-3661.999**

## **XVI. COMPOSITIONS, 3662.100-3670**

## **XVII. ADJUSTMENT OF DEBTS OF FAMILY FARMER, 3671-3700**

## **XVIII. INDIVIDUAL DEBT ADJUSTMENT, 3701-3740**

In re Garry and Cynthia Gleason

11 U.S.C. § 1325(b)(1)

No. 01-01029-C, Ch. 13, 9/14/01

(published at \_\_\_ B.R. \_\_\_, 2001 WL 1149069)

Trustee objects to confirmation of Debtors' Chapter 13 plan. She argues Debtors' expenses are excessive and Debtors could devote more disposable income to the plan. HELD: The Court examines Debtors' entire budget. Expenses which are somewhat more discretionary, and nondiscretionary expenses which are excessive, are lumped together to determine disposable income. School activities, recreation and gifts are discretionary expenses. Debtors' budget attributes excessive amounts to nondiscretionary expenses of food, medical and dental expenses and home maintenance. Confirmation is denied as Debtors' disposable income allows payments substantially larger than proposed.

In re Damian and Casi Cummins

11 U.S.C. § 1328(b)

No. 98-03221-C, Ch. 13, 9/5/01

(published at 266 B.R. 862)

Debtors request Chapter 13 hardship discharge. HELD: Debtors have made a sincere effort to pay and their economic situation is unfavorable. They have failed, however, to show catastrophic or extraordinary circumstances necessary for discharge under sec. 1328(b). The case is dismissed.

In re David and Revette Weber

11 U.S.C. § 1325(b)(1)

In re John Lund

Nos. 00-01613-CV, 00-01683-C, Ch. 13, 12/21/00

Trustee objects Debtors should devote their disposable income to the Chapter 13 plan for the entire term of the plan, not just the first three years. HELD: The Code does not require Debtors to pay disposable income to the plan for any extended term beyond the first 36 months. Including such limitation in the plans does not indicate bad faith.

In re Deanna R. Ploessl

11 U.S.C. § 1328(a)

No. 00-01673-D, Ch. 13, 12/4/00

Debtor attempts to discharge postpetition interest accruing on her nondischargeable student loan debt. HELD: Student loan creditors are entitled to postpetition interest on the debt. This accruing interest is nondischargeable and collectible after completion of the Chapter 13 plan. The plan may not include a provision discharging nondischargeable postpetition interest.

## **XIX. REVIEW, 3741-3860**

### **B. Review of Bankruptcy Court, 3761-3810**

Defendants move to dismiss notice of appeal filed after the appeal deadline by pro se Debtor. HELD: Debtor's appeal is dismissed as untimely. Ignorance of the deadline is not excusable neglect sufficient for the Court to treat the notice as a timely motion for extension of time.

**XX. OFFENSES, 3861-3863**